



W.P.(MD)No.235 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 06.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD)No.235 of 2025

and

W.M.P.(MD)No.198 of 2025

A.K.Srinivasan

... Petitioner

Vs.

The Branch Manager,
Indian Bank,
No.14/1, Ittamozhi Road,
Thisayanvilai,
Tirunelveli District.

...Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings in Letter Ref No. Thisayanvilai/2024-25/187 dated 02.01.2025 and quash the same as illegal and consequently direct the respondent to provide two months time to the petitioner to repay the amount of Rs.98,00,000 /- as per one time settlement scheme.



WEB COPY



W.P.(MD)No.235 of 2025

For Petitioner : Mr.R.Krishnamoorthi
for M/s.T.Bashyam
For Respondent : Mr.C.Karthik
Standing Counsel

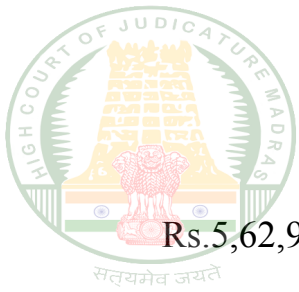
ORDER

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

The proceedings dated 02.01.2025 issued by the respondent is sought to be assailed in the present Writ proceedings.

2.The learned counsel appearing for the petitioner would submit that the petitioner has complied with the interim order passed by this Court and accordingly, paid a sum of Rs.25 lakhs. Thereafter, he has settled a sum of Rs.73 lakhs and therefore, entire loan transactions came to an end. In total, he has paid a sum of Rs.1,98,00,000/-. Therefore, the petitioner is entitled to get back his original title documents deposited in the loan account.

3.The learned Standing Counsel appearing for the respondent would submit that the petitioner is not eligible to avail the benefit of One Time Settlement and therefore, he has to settle the entire loan dues, which is around



W.P.(MD)No.235 of 2025

Rs.5,62,93,756/- as on 26.02.2025. The said amount is to be recovered from the petitioner.

4.The High Court in exercise of judicial review under Article 226 of Constitution of India cannot adjudicate such disputed facts, relating to loan transaction between the petitioner and the Bank. It is a contractual obligation, which is to be adjudicated only before the competent forum. SARFAESI proceedings are initiated by the Bank under the Act and thus, the petitioner ought not to have approached the Writ Court by way of filing Writ Petition, in view of the legal principles settled by the Hon'ble Supreme Court of India in the case of ***Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others*** reported in ***(2024) 2 SCC 1***. Paragraph Nos.97, 98, 110 and 110.1 would be relevant in this context and have been extracted herein:-

“97.This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act. This Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] made the following observations : (SCC pp. 123 & 128, paras 43-45 & 55)

“43. Unfortunately, the High Court [Satyawati



WEB COPY



W.P.(MD)No.235 of 2025

Tondon v. State of U.P., 2009 SCC OnLine All 2608]
overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five



WEB COPY



W.P.(MD)No.235 of 2025

prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the Sarfaesi Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their



WEB COPY



W.P.(MD)No.235 of 2025

discretion in such matters with greater caution, care and circumspection.”

98. *In CIT v. Chhabil Dass Agarwal [CIT v. Chhabil Dass Agarwal, (2014) 1 SCC 603]* , this Court in para 15 made the following observations : (SCC p. 611, para 15)

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [Thansingh Nathmal v. Supdt. of Taxes, 1964 SCC OnLine SC 13] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for



WEB COPY



W.P.(MD)No.235 of 2025

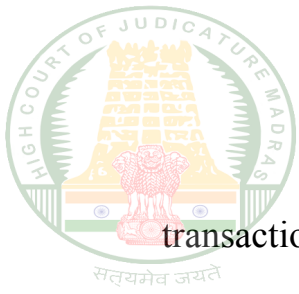
redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

110. We summarise our final conclusion as under:

110.1. The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.”

5. Practice of settling the loan amount in a Writ proceedings at no circumstances be encouraged by the High Court. The High Court cannot conduct an adjudication of disputed facts. The power of judicial review under Article 226 of Constitution of India is to ensure the process through which a decision has been taken by the authorities competent in consonance with the statutes and rules in force, not decision itself. Thus, the scope of power of judicial review cannot be expanded for adjudication of disputed facts, which may result in miscarriage of justice or would prejudice to any one of the parties.

6. Thus, this Court is of the considered opinion that practice of entertaining this Writ Petition relating to the dispute under SARFAESI Act at no circumstances be encouraged, since it may cause prejudice to the banking



W.P.(MD)No.235 of 2025

transaction and to recover the dues from the borrowers. In the present case, the petitioner states that he has cleared the loan by settling the amount as per One Time Settlement Scheme. However, the respondent Bank raised an objection, stating that the petitioner is not entitled to avail One Time Settlement Scheme. Thus, the issues are to be adjudicated in the manner known to law.

7.For all these reasons, this Writ Petition stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (A.D.M.C., J.)

06.06.2025

NCC : Yes / No
Index : Yes / No

Yuva



WEB COPY



W.P.(MD)No.235 of 2025

S.M.SUBRAMANIAM, J.

AND

DR.A.D.MARIA CLETE, J.

Yuva

W.P.(MD)No.235 of 2025

06.06.2025